

1 had suggested to an SCT salesperson that offering a television
2 set would be even better than a telephone. (Ferguson depo.,
3 132:20-28, PacWest Ex. 7.) The televisions were offered to
4 current PacWest subscribers, 35 in all, but not to any other
5 non-SCT subscribers. (Ferguson depo., 133:1-15, PacWest Ex.
6 7.) The offer resembled SCT's cordless phone offer in that in
7 exchange for receiving a free television set, customers signed
8 an agreement that they would subscribe to SCT for six months
9 with the regular basic or higher service. (Ferguson depo.,
10 133:26-134:2, PacWest Ex. 7; Lewis depo., 112:24-113:5, PacWest
11 Ex. 10.) By March 1989, SCT had given away seven television
12 sets. (Ferguson depo., 133:23, PacWest Ex. 7; Lewis depo.,
13 112:7, PacWest Ex. 10; Ex. 50 - P.158.)

14 100. Also in the beginning of 1989, SCT offered Handy
15 Andy \$100 gift certificates in Ardenale, as well as
16 elsewhere. (PacWest Ex. 50 - P.131, 132.) Although SCT had
17 made many promotional offers to subscribers and prospective
18 subscribers since 1986, the cordless phone, color television
19 set and Handy Andy gift certificate were the only gift
20 giveaways that SCT had ever conducted which were not simply the
21 local implementation of a larger promotion sponsored by a
22 national programming service. (Lewis depo., 126:12-129:17,
23 PacWest Ex. 10.)

24 101. SCT's penetration rate in the PacWest Arden area
25 has been consistently five to seven percent (5-7%) higher than
26 SCT's penetration rate countywide. (Ferguson depo.,
27 97:23-98:4, PacWest Ex. 7.) Besides the free and reduced price
28 offerings, SCT's aggressive marketing efforts, whereby the

1 company contacted subscribers and nonsubscribers more often
2 than those in other areas of the county, accounted for the
3 higher penetration rates in that area. (Ferguson depo.,
4 98:25-99:10, PacWest Ex. 7.)

5 102. SCT's predatory strategy achieved clearly
6 effective results for SCT. The efforts succeeded in quashing
7 the competition. SCT bought out Cable Americal in summer, 1988
8 (PacWest Ex. 40.)

9 103. As a result of these pricing strategies, while
10 competing with Cable Americal, SCT's penetration rate in the
11 areas where the two companies competed was consistently about
12 fifteen percent (15%) higher than SCT's penetration rate in

1 105. Regular reports were made at SCT staff meetings
2 regarding not only PacWest's difficulties in obtaining an
3 agreement with SCT on PacWest's make-ready work, but also the
4 progress of PacWest's make-ready work, trenching and
5 construction on the poles. (See, e.g., PacWest Ex. 50 - P.41,
6 51, 52, 64, 71, 107, 115, 127, 130, 132, 145.)

7 106. SCT was also careful to keep track of promotional
8 offers made by PacWest and PacWest's attempts to attract
9 subscribers. At a June 29, 1988 SCT staff meeting Doug
10 Ferguson, SCT's sales manager in charge of the PacWest area,
11 reported: "Rumor -- contract mrktg (Lodi) to work [for]
12 PacWest." (PacWest Ex. 50 - P.60.) In July or August,
13 Ferguson called PacWest to find out PacWest's prices, and went
14 into PacWest's office to pick up promotional fliers. (Reynolds
15 depo., 84:6-87:1, PacWest Ex. 11.) When SCT found out that
16 PacWest was offering three months for the price of one, SCT
17 undercut it with an offer of four months for the price of one.
18 (PacWest Ex. 50 - P.73.)

19 107. On August 11, 1988 it was reported that PacWest
20 was charging \$11.50 for basic service, \$3.00 less than SCT.
21 (PacWest Ex. 50 - P.74.) It was decided therefore to send out
22 a "count and compare letter/mailer" saying that SCT offers the
23 same price. Id.

24 108. The following week, Ferguson made an express
25 commitment to tracking PacWest's rates: "We need to get PW rate
26 card as per Peter Kenney (Wash. D.C. lawyer) or document their
27 rates." (PacWest Ex. 50 - P.77.) At that point, Ferguson had
28 reported that PacWest was a "reality" in Ardendale and was

1 "expected to gear up" by September 1. Id. He also announced

1 115. On February 2, 1989 Ferguson reported at an SCT
2 meeting that PacWest had 30 to 40 subscribers. (PacWest Ex. 50
3 - P.145.) The following week he reported that PacWest was
4 "still going extrem[ely] slow." (PacWest Ex. 50 - P.149) This
5 report noted that PacWest was adding four or five subscribers
6 per week, while SCT was receiving approximately 23 orders per
7 week. Id. One week later, on February 15, 1989, Ferguson
8 reported that PacWest was shifting its focus to multiple
9 dwelling units ("MDU's"), and that therefore SCT should focus
10 on subscribers in MDU's. (PacWest Ex. 50 - P.151.) Two weeks
11 later, Doug Ferguson reported that PacWest was "not moving,"
12 and that SCT took seven of PacWest's 35 subscribers and lost
13 two subscribers to PacWest. (PacWest Ex. 50 - P.158.)

14 116. On March 8, 1989, it was reported that
15 indications showed PacWest had "shut down." (PacWest Ex. 50 -
16 P.160.) At that meeting, reference was made to PacWest's joint
17 venture with People's Choice, that PacWest had laid off some of
18 their people, and that they would probably focus on MDU's.
19 Id. Notes of that meeting also contained the following
20 notation: "Ron Chamberlain (engineer) - finish out Arden."
21 Id. At the March 8 meeting it was also noted that SCT's store
22 in the PacWest Arden area would be "shut down" and another
23 store would be opened further south. Id.

24 117. Ferguson made further reports on his
25 investigations of PacWest's activity at SCT's March 16, 1989
26 meeting. (PacWest Ex. 50 - P.164.) Apparently referring to
27 calls he made to PacWest's office, Ferguson reported: "mixed
28

respon[se] from PacWest - 'no sales person now' another 'Have someone to contact.' Cut their staff from 23 to 7 or 8." (Id.)

118. The following week on March 22, 1989 Ferguson reported that PacWest was "still talking to MDU's - Not restrict to 'comp.'" (PacWest Ex. 50 - P.169.) He also noted that People's Choice was not hiring sales staff and that the company had four channels but would be adding six. Id.

118. At a May 24, 1989 staff meeting, it was reported that PacWest MMDS had sent out a flier to Laguna. Reference was then made to a "Strong marketing camp[a]ign in fall when they add 3 Ch[annels], A & E, ESPN & TNT." (PacWest Ex. 50 - P.184.)

C. SCT's Attempts to Shut PacWest Out of the Cable Market in Sacramento By Making Special Arrangements with Multiple Dwelling Unit Managers

119. SCT employed the territory management strategy for Multiple Dwelling Units ("MDUs") throughout its franchise area during most of 1987 and throughout 1988. (Ferguson depo., 31:19-25, 32:5-6, PacWest Ex. 7.) This strategy resulted in SCT achieving a higher penetration in the MDU market than it would have achieved through its regular marketing methods. (Ferguson depo., 33:24-34:1, PacWest Ex. 7.)

120. In a letter dated May 23, 1988, Davis requested that the multiple-dwelling unit managers who had previously granted SCT right of entries ("ROEs") add an addendum to their non-exclusive right of entry agreements with SCT to make those agreements exclusive arrangements between SCT and the apartment buildings. (PacWest Ex. 103.) The May 23 letter was sent to all complexes over 50 units in the PacWest-Arden area and the

1 immediate surrounding area. (Reynolds depo., 29:26, PacWest
2 Ex. 11.) Reynolds and Davis first discussed the subject of
3 obtaining exclusive right of entry agreements for SCT in late
4 1987, early 1988. (Reynolds depo., 43:1-25, PacWest Ex. 11.)
5 In early 1988, SCT created a standard form for an exclusive
6 right of entry agreement. (Reynolds depo., 43:1-25, PacWest
7 Ex. 11.) The idea of seeking to convert the non-exclusive
8 right of entry agreements they had with MDUs arose in April
9 1988. (Reynolds depo., 32:7-33:22, PacWest Ex. 11.) The May
10 23 letter resulted in some recipients signing and returning
11 copies of the addenda, thus foreclosing PacWest from access to
12 them. (Reynolds depo., 35:7-14, PacWest Ex. 11.)

13 121. On February 24, 1988, Brian Reynolds reported
14 that SCT expected to finalize a contract with the Nepenthe and
15 Campus Commons buildings (located in the PacWest-Arden area
16 within a month, and that these buildings "should be included in
17 [the] project team for specialized service." (PacWest Ex. 50 -
18 P.46.)

19 122. Reynolds was involved in negotiations between SCT
20 and homeowners' associations in the La Pinta and Campus Commons
21 condominiums. (Reynolds depo., 149:27-150:1, PacWest Ex. 11.)
22 The contracts between SCT and these homeowners' associations
23 were finalized in March or April of 1988. (Reynolds depo.,
24 150:2, PacWest Ex. 11.) In exchange for obtaining the right of
25 entry at these condominiums, SCT agreed to reimburse the
26 homeowners' associations for the mailers used to notify their
27 members of SCT's construction process. (Reynolds depo.,
28 148:5-20, PacWest Ex. 11.) The reimbursements amounted to

1 \$500-\$700 for each homeowners' association. (Reynolds depo.,
2 150:27-151:3, PacWest Ex. 11.) Also in exchange for the rights
3 of way in both condominium complexes, SCT offered one month
4 free cable service to each household. (Reynolds depo.,
5 151:5-8, PacWest Ex. 11.)

6 123. Under the La Pinta contract, as SCT reached
7 higher penetration within the complex, SCT agreed to reduce its
8 basic rate to a fraction of what it charged elsewhere in
9 Sacramento County. (Reynolds depo., 153:28-154:5, PacWest Ex.
10 11.) This is a very unusual arrangement for SCT. (Reynolds
11 depo., 154:5, PacWest Ex. 11.) It provided an incentive for La
12 Pinta to exclude PacWest from access, since higher SCT
13 penetration translated into lower prices.

14 124. At a February 2, 1989 SCT meeting Ferguson
15 reported: "P[ac]W[est] about to apply for Natomas, Southeast,
16 heavily MDU'd areas." (PacWest Ex. 50 - P.145.) At that time
17 Ferguson focused his work on sales to multiple dwelling units
18 ("MDUs"). (Ferguson depo., 5:7-16, 14:15-18, PacWest Ex. 7.)

19 125. In mid-February 1989 Ferguson reported that
20 PacWest was shifting its focus to multiple dwelling units
21 ("MDUs"), and that therefore SCT should focus on subscribers in
22 MDUs. (PacWest Ex. 50 - P.151.) In the beginning of March,
23 Ferguson started focusing his "entire work on MDUs" in and
24 outside of the PacWest Arden area. (Ferguson depo., 14:26-27,
25 PacWest Ex. 11.) The MDU project he works on involves
26 monitoring customer satisfaction, "securing additional rights
27 of entry agreements", and overseeing conversion of
28

1 satellite-fed MDUs to cable. (Ferguson depo., 5:10-16, PacWest
2 Ex. 7.)

3 126. At a March 8, 1989 SCT staff meeting reference
4 was made to PacWest's joint venture with People's Choice, and
5 that they would probably focus on MDUs. (PacWest Ex. 50 -
6 P.160.) At that meeting it was also noted that SCT's store in
7 the PacWest Arden area would be "shut down" and another store
8 would be opened further south. Id.

9 127. The following week on March 22, 1989 Ferguson
10 reported that PacWest was "still talking to MDUs." (PacWest
11 Ex. 50 - P.169.)

12 D. SCT's Obtaining of Exclusive Licenses to
13 Programming and Its Threat To PacWest's Contractor

14 128. For the 1988 season, SCT requested and received

three months, in an effort to deter this experienced contractor from performing work for PacWest. (Iacopi decl., ¶41, PacWest Ex. 3; PacWest Ex. 146.) Such actions could have forced PacWest to hire inexperienced contractors who would take longer to do the work. (Iacopi decl., ¶41, PacWest Ex. 3.)

F. SCT'S TACTICS TO STALL PACWEST'S MAKE-READY WORK

130. After July 1987, PacWest's contractor prepared the maps and did the necessary make-ready engineering work to prepare for construction. On November 17, 1987, PacWest executed Pac Bell's standard pole attachment agreement. (Iacopi decl., ¶8, PacWest Ex. 3.)

131. "Make-ready" work is the process by which a utility pole is made ready to accept the attachment of cable strand. Make-ready usually requires the movement of facilities (also termed "plant") already attached to the poles. In this case, make-ready required that SCT's, Pac Bell's, and/or the Sacramento Municipal Utility District's ("SMUD") facilities be moved in order to make the pole ready to accept PacWest's cable attachment. Although most of the poles involved were owned or controlled by Pac Bell, it requested PacWest to work out arrangements with SCT before rearrangements began. Because of delay tactics employed by SCT, it took most of 1988 to work out an arrangement with SCT for the make-ready work which was necessary before PacWest could construct its cable system. During this period, SCT's actions kept PacWest entirely off the poles. (Iacopi decl., ¶9, PacWest Ex. 3.)

1 132. In February, 1988 PacWest requested a meeting
2 with SCT to work out arrangements for the make-ready work. On
3 or about March 3, 1988 several PacWest and SCT representatives
4 met to discuss make-ready arrangements. SCT representatives at
5 the meeting included a Mr. Romano of Scripps Howard, as well as
6 Richard J. Davis, David Conkle, and Brian Reynolds of SCT. At
7 the outset of that meeting, Mr. Romano asserted, without any
8 justification, that only SCT's people, and no one
9 else--including independent contractors--would be allowed to
10 move SCT's facility. This position was clearly unreasonable in
11 view of the fact that SCT had used an independent contractor to
12 build its own facilities and to do the rearrangements of Pac
13 Bell's facilities when SCT built its system. (Iacopi decl.,
14 ¶10, PacWest Ex. 3.)

15 133. PacWest proposed that the rearrangement work be
16 done by one qualified contractor in order to save costs and
17 time. This is the most logical and efficient method of doing
18 make-ready work because both facilities can be rearranged at
19 the same time, avoiding the delay and expense of having two
20 different contractors climb the poles. Iacopi offered to
21 submit a list of qualified cable and telephone rearrangement
22 contractors to SCT so that a contractor of SCT's choice could
23 do the rearrangements for both Pac Bell and SCT. As an
24 alternative, PacWest suggested, in order to accommodate SCT's
25 position and our view that one contractor should move both
26 facilities, that SCT do the rearrangements for both SCT and the
27 telephone company under Pac Bell's supplemental agreement with
28

1 PacWest. SCT agreed to consider these two proposals and get
2 back to PacWest. (Iacopi decl., ¶11; PacWest Ex. 3.)

3 134. On March 10, 1988, Iacopi sent a letter to
4 Richard J. Davis, Chief Executive Officer of SCT, reiterating
5 the two proposals made at the March 3, 1988 meeting and noting
6 that if SCT chose to rearrange both facilities PacWest would
7 agree to such arrangement with the understanding that the work
8 would be done promptly, in the proper fashion and at
9 competitive prices. (Iacopi decl., ¶12; PacWest Ex. 3.) In
10 the letter, Iacopi further noted that SCT's concern that it
11 could not trust independent contractors to do the
12 rearrangements seemed rather curious in light of the fact that
13 SCT's facility was built by an independent cable construction
14 company. (Iacopi decl., ¶12; PacWest Ex. 3.) Indeed, at least
15 two potential contractors Iacopi considered for the work, K & B
16 America and Burnup & Sims, had done make-ready work for SCT and
17 other cable companies, and were on Pac Bell's approved
18 contractor list. (Iacopi decl., ¶12, PacWest Ex. 3.)

19 135. On March 22, 1988, Davis advised Iacopi that SCT
20 would agree to have an "SCT contractor" approved by Pac Bell
21 rearrange both SCT's and the telephone company's facilities.
22 (Iacopi decl., ¶13; PacWest Ex. 3.)

23 136. On or about March 24, 1988, Iacopi and several
24 other representatives of PacWest again met with Davis and other
25 representatives of SCT to discuss rearrangement of the
26 facilities on the utility poles. At that meeting, it was
27 agreed that either a third party contractor from a list
28 submitted by PacWest to SCT or SCT itself would be the
contractor to

rearrange the Pac Bell and SCT facilities. (Iacopi decl., ¶14; PacWest Ex. 3.) Also, contracting arrangements that would ensue between SCT and PacWest were discussed. In a letter dated March 29, 1988 letter, Iacopi outlined the issues discussed and asked Davis to respond within one week with an outline of his proposed procedures and inform him which contractor SCT proposed to use. (Iacopi decl., ¶14; PacWest Ex. 3; PacWest Ex. 58.)

137. On April 6, 1988 Davis notified Iacopi that SCT would like to become the prime contractor for rearrangement of both Pac Bell's and SCT's facilities. (Iacopi decl., ¶15., PacWest Ex. 3; PacWest Ex. 59.) Davis also outlined SCT's proposed procedures, and provided an incomplete list of SCT's rates for make-ready work. (Iacopi decl., ¶15, PacWest Ex. 3; PacWest Ex. 59.)

138. On April 13, 1988 Iacopi advised Davis that Davis had omitted eleven items involved in make-ready work from his list and requested SCT's prices on those items. Iacopi also noted that the prices he had provided were consistently high compared to competitive bids which had been received (which directly contradicted the agreement that SCT would provide the work at competitive prices). (Iacopi decl., ¶16, PacWest Ex. 3; PacWest Ex. 60.)

139. SCT's intention to stall in working out the make-ready arrangements was especially apparent with regard to obtaining approval from Pac Bell as an approved contractor under PacWest's supplemental agreement. (Iacopi decl., ¶12, PacWest Ex. 3.) In his letter dated April 6, 1988, Davis had represented that SCT's construction manager had discussed SCT

1 becoming the approved contractor to move to Pac Bell and SCT
2 facilities with "Pac Bell representatives" and Pac Bell had no
3 problem with this arrangement. (Iacopi decl., ¶17, PacWest Ex.
4 3; PacWest Ex. 59.) However, Iacopi subsequently found out that
5 neither Betty Winter nor Sal Orosco, the Pac Bell
6 representatives working on cable matters, had ever been
7 contacted by SCT with regard to SCT being approved as a
8 contractor for this project. (Iacopi decl., ¶17, PacWest Ex. 3.

9 140. After Iacopi discovered that SCT had violated its
10 agreement to apply to become the approved contractor and had
11 misinformed me, Iacopi urged Davis to contact Pac Bell and make
12 preliminary arrangements as soon as possible. (Iacopi decl.,
13 ¶18, PacWest Ex. 3; PacWest Ex. 60.) Instead, SCT continued to
14 unnecessarily delay the start of make-ready work. (Iacopi
15 decl., ¶18, PacWest Ex. 3.)

16 141. On April 19, 1988 Davis sent Iacopi a revised
17 list of prices for SCT's work and, for the first time, requested
18 that PacWest apply to Pac Bell to have SCT as the contractor.
19 (Iacopi decl., ¶15, PacWest Ex. 3; PacWest Ex. 61.)

20 142. On April 21, 1988, Iacopi telephoned Davis and
21 told him that SCT must apply directly to Pac Bell in order to be
22 accepted as a contractor under PacWest's supplemental agreement
23 with Pac Bell. Iacopi followed up this telephone conversation
24 with a letter of the same date, noting that he thought Davis had
25 already taken the necessary steps to apply, and that in any case
26 Davis should do so immediately. (Iacopi decl., ¶20, PacWest Ex.
27 3; PacWest Ex. 62.)

1 143. Iacopi subsequently learned that it was not until
2 April 25, 1988, that David Conkle, Director of Technical
3 Operations at SCT, had even inquired with Pac Bell as to what
4 procedures SCT should follow, and what documentation would be
5 required for approval as a contractor under PacWest's
6 supplemental agreement with Pac Bell. (Iacopi decl., ¶21,
7 PacWest Ex. 3; PacWest Ex. 63.) SCT was simply stalling.

8 144. In an effort to finalize arrangements for the
9 make-ready work, Iacopi sent a proposed contract to Davis with a
10 letter dated April 22, 1988 and suggested they set up a meeting
11 for further negotiations. (Iacopi decl., ¶22, PacWest Ex. 3;
12 PacWest Ex. 64.) Davis responded with two letters, both dated
13 April 28, 1988. In one he refused to negotiate the contract
14 until PacWest accepted several SCT proposals which PacWest had
15 believed were negotiable. (Iacopi decl., ¶22, PacWest Ex. 3;
16 PacWest Ex. 65.) In the second letter, Davis stated that he
17 would terminate any discussion on this matter unless PacWest
18 agreed to reimburse SCT for purported expenses being incurred by
19 SCT in dealing with this matter. (Iacopi decl., ¶22, PacWest
20 Ex. 3; PacWest Ex. 66.) He did not specify in any manner what
21 expenses he was referring to. (Iacopi decl., ¶22, PacWest Ex.
22 3.)

23 145. By April 29, 1988 it became apparent that SCT
24 would stall forever if Pac Bell did not intervene. In view of
25 SCT's delaying tactics, Iacopi wrote a letter requesting that
26 Pac Bell exercise its authority to have SCT's facility
27 rearranged. (Iacopi decl., ¶23, PacWest Ex. 3; PacWest Ex.
28 67.) Iacopi subsequently learned that Pac Bell had written SCT

1 on two previous occasions offering to coordinate make-ready
2 arrangements with SCT. (Iacopi decl., ¶23, PacWest Ex. 3;
3 PacWest Exs. 68 and 69.) Pac Bell's offers all went
4 unacknowledged by SCT. (Iacopi decl., ¶23, PacWest Ex. 3.)

5 146. Because of all the difficulties that continued to
6 arise in PacWest's attempts to reach an agreement with SCT on
7 the make-ready procedures, Iacopi continued to request that SCT
8 agree to have an independent contractor do the work. He made
9 such request in a letter dated May 6, 1988 to Mike Callaghan,
10 who Iacopi was told to contact while Davis was out on jury duty,
11 and again in a letter to Davis dated May 19, 1988. (Iacopi
12 decl., ¶24, PacWest Ex. 3; PacWest Exs. 70 and 71.) Further
13 Iacopi proceeded to finalize the supplemental attachment
14 agreement with Pac Bell so that PacWest could at least have a
15 contractor lined up to move the Pac Bell facility. (Iacopi
16 decl., ¶24, PacWest Ex. 3; PacWest Ex. 72.)

17 147. On May 12, 1988 Iacopi again wrote Davis to
18 request a meeting to hammer out a final agreement on make-ready
19 arrangements. (Iacopi decl., ¶25, PacWest Ex. 3; PacWest Ex.
20 73.)

21 148. Notwithstanding Iacopi's continuing requests for
22 action, he later learned that SCT did not submit a formal
23 application to Pac Bell to be included as a licensed contractor
24 under PacWest's supplemental agreement with Pac Bell until May
25 11, 1988. (Iacopi decl., ¶26, PacWest Ex. 3; PacWest Ex. 74.)
26 Some time in mid-May 1988 Pac Bell rejected SCT's application to
27 become a contractor to rearrange Pac Bell on the poles. In no
28 rush to work out the make-ready arrangements, Davis waited until

1 a May 23, 1988 meeting, which had already been scheduled with
2 us, to inform PacWest of the rejection. (Iacopi decl., ¶26,
3 PacWest Ex. 3.)

4 149. At the May 23, 1988 meeting, Davis finally
5 conceded that PacWest and SCT could work out an arrangement
6 whereby an independent contractor could move both Pac Bell and
7 SCT facilities. They discussed an arrangement under which
8 inspectors hired by SCT would follow PacWest crews to inspect
9 PacWest's rearrangement of SCT's facility. (Iacopi decl., ¶27,
10 PacWest Ex. 3.)

11 150. On May 26, 1988 another meeting was held to work
12 out the logistics, this time including SCT, PacWest and K & B
13 America (the contractor hired by PacWest to perform the
14 make-ready work after SCT was unable to secure Pac Bell's
15 approval as a qualified contractor). At this meeting they again
16 discussed the proposed arrangement. It appeared that SCT would
17 finally quit stalling. (Iacopi decl., ¶28, PacWest Ex. 3.)

18 151. However, over the next two months SCT proceeded
19 to impose a series of impossible conditions to delay a final
20 agreement on the make-ready work. First, Davis refused to
21 provide any guidelines with regard to the costs PacWest might
22 incur in paying for SCT's inspection crew. (Iacopi decl., ¶29,
23 PacWest Ex. 3; PacWest Ex. 75.) Next, he quoted obviously
24 excessive prices to be paid by PacWest for SCT's inspectors.
25 (Iacopi decl., ¶29, PacWest Ex. 3; PacWest Exs. 76 and 77.) At
26 that point Iacopi offered three reasonable alternative
27 compromises, (PacWest Ex. 77), one of which was ultimately
28 agreed to after weeks of further delay. At this juncture,

1 however, Davis continued to make unreasonable demands. In
2 response to Iacopi's proposals, Davis revealed that his price
3 figures were based on the assumption that the inspection team to
4 be employed by SCT at PacWest's expense would consist of five
5 personnel, one engineer, three inspectors and one senior clerk.
6 (Iacopi decl., ¶29, PacWest Ex. 3; PacWest Ex. 78.) Further, he
7 set forth a proposal by which SCT would bill PacWest at a
8 minimum rate of "\$5,331.20 per week." (Iacopi decl., ¶29,
9 PacWest Ex. 3; PacWest Ex. 78.)

10 152. In a series of letters and telephone calls, over
11 the next few weeks PacWest repeatedly explained to Davis why his
12 position made no sense and was clearly unreasonable. (Iacopi

1 agreement had in fact been reached. (Iacopi decl., ¶137, PacWest
2 Ex. 3; PacWest Exs. 90 and 91.)

3 160. In view of SCT's representation, PacWest elected
4 to proceed with the make-ready work on the basis of the existing
5 oral agreement. PacWest hired an independent contractor to
6 inspect for SCT and briefly commenced work. (Iacopi decl., ¶138,
7 PacWest Ex. 3.)

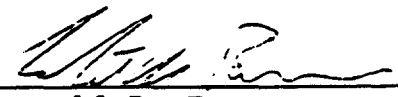
8 161. As a result of PacWest's decision to proceed with
9 the make-ready work based upon the "oral" agreement, SCT finally
10 forwarded the promised contract on September 1, 1988. (Iacopi

decl. ¶139, PacWest Ex. 3; PacWest Ex. 92.) The contract was

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DATED: February 9, 1990

Respectfully submitted,
FARROW, SCHILDHAUSE & WILSON


By: Harold R. Farrow
Robert M. Bramson
Mark A. Chavez

WEINTRAUB, GENSHLEA, HARDY,
ERICH & BROWN

Louise Burda Gilbert

EXHIBIT III

SACRAMENTO METROPOLITAN CABLE TELEVISION COMMISSION
1010 8th STREET
SACRAMENTO, CALIFORNIA 95814

MONDAY DECEMBER 7, 1987 4:30 P.M.

Members: Illa Collin, Orvell Fletcher, Toby Johnson, Lynn Robie,
Terry Kastanis, Doug Pope

Please Note Date and Location: The Commission Meeting will be held on Monday, December 7th at 4:30 p.m. in the Board of Supervisor's Chambers, 700 H Street.

SPECIAL MEETING

- ITEM NO. 1) Joint Closed Executive Session of Board of Supervisor's, City Council, Cable Commission - Pending Litigation Regarding Cable Americal, Inc., v. City of Sacramento, et al.; Pacific West vs. City of Sacramento, et al.; Iacopi v. City of Folsom, et al.; Pacific West Cable Co. v. City of Folsom, et al.; and Sacramento Cable Television vs. Sacramento Metropolitan Cable Television Commission, et al.
- ITEM NO. 2) Joint Session of Board of Supervisor's, City Council, Cable Commission - Memo of Understanding Regarding Litigation
- Action Required: Adopt Resolution Approving Memorandum of Understanding Regarding Litigation
- ITEM NO. 3) Public Opportunity to Discuss Matters Not On This Agenda But Within Commission Jurisdiction
- Action Required: Receive Public Comments

* * *

SACRAMENTO METROPOLITAN



CTC Cable Television Commission

ITEM 2

1010 8TH STREET, SACRAMENTO, CA 95814 • (916) 440-6661

ROBERT E. SMITH

Settlement

Page 2

December 7, 1987

- The company not make further payments for 5 years as credit against this settlement payment. During the sixth year SCT will pay \$1 million and in the seventh and eighth years, will pay \$2.5 million per year.
- In the ninth year and continuing until the end of the extended franchise period of year 2023, the Commission will receive essentially \$2.5 million dollars per year adjusted by the ebb-and-flow of gross revenues of SCT or the legal limit, which ever is lower. (The calculation of this fee is accomplished by dividing \$2.5 million into the gross revenues in the ninth year and using that percentage of gross revenues as a method of calculating the fees throughout the life of the franchise.)

SCT will be treated as a Licensee with the exception of the following.

- Provides universal and uniform service throughout the entire imposed service area. (Uniform service means all services regardless of how they are marketed or "packaged" will be available throughout the system to those willing to pay the charges.)
- Retains current construction bonding requirements and ability to construct in new areas outside the imposed service area.
- Provides all existing and future services including those which may not be authorized by the First Amendment of the U. S. Constitution.
- Permits rate flexibility but only in areas where head-to-head competition occurs. In addition, special promotion rates are

Settlement

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- Upon execution of the MOU by the Board of Supervisors, City Council, and Cable Commission, to make the November payments to the Cable Commission, Sacramento Community Cable Foundation, Sacramento Education Cable Consortium, KVIE, and KXPR in the total amount of \$477,000.

This settlement comports favorably with the authorized negotiation parameters approved by the Commission, Board of Supervisors, and City Council on November 13, 1987; and, in fact, in quantifiable terms, \$3.1 million more. It has been reviewed by the County Counsel, City Attorney, and Commission Counsel, all of whom recommend its approval. The next step following approval of the MOU requires the respective attorneys to prepare a written settlement document for your approval on January 18, 1988.

Ultimately, the settlement document will also require formal approval through ordinance amendment by all the constituent jurisdictions and, finally, federal court. This process is expected to begin immediately following finalization of the settlement document on January 18, 1988.

It is, therefore, recommended by staff that the Sacramento City Council, the County Board of Supervisors, and the Commission adopt the attached resolution:

1. Approving and authorizing signature of the Memorandum of Understanding, and
2. Establishing January 18, 1988, as a Joint Executive Session and subsequent public hearing to be held at 2:30 p.m. in the Board of Supervisor's Chambers, 700 H Street, to approve the final settlement agreement.


BOB SMITH, Executive Director
Sacramento Metropolitan Cable
Television Commission

RES:dh

Attachment: Resolution
Exhibit A - Memorandum of Understanding

cc: Honorable Steve Sekelsky, Mayor of Galt
Honorable Jack Kipp, Mayor of Folsom
Galt City Council
Folsom City Council
Larry Pennell, Galt City Manager
Bill Kime, Folsom City Manager
Walter Slipe, Sacramento City Manager
Brian Richter, County Executive

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